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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,776	03/22/2004	Gene A. Frantz	TI-37762	9940
23494 7590 10/29/2008 TEXAS INSTRUMENTS INCORPORATED P O BOX 655474, M/S 3999 DALLAS, TX 75265				
EXAMINER TRUVAN, LEYNN A THANH				
ART UNIT 2435		PAPER NUMBER		
NOTIFICATION DATE 10/29/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@ti.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/805,776

Applicant(s)

FRANTZ, GENE A.

Examiner

Leynna T. Truvan

Art Unit

2435

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-6, 8-15, 18, 19, 21 and 23-25.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Kimyen Vu/
Supervisory Patent Examiner, Art Unit 2431

Continuation of 11, does NOT place the application in condition for allowance because: claims 1-6,8-15,18,19,21 and 23-25 remains rejected over Folmsbee and Srinivasan combination. To clarify, Srinivasan is the secondary prior art used in combination with Folmsbee. The current amendment is entered in part where claims 11-15 will not be entered since they amended after the Final rejection (8/8/2008). As for claims 1-6, 8-10, 18, and 19 are entered.

As for arguments on pg.12, with regard to claims 1-6, 8-15, 18, and 19 that Folmsbee discloses a system that executes encrypted software code without performing decryption. It is obvious in the cryptography art that decrypting a program or file renders the qualified person to read or have access to the encrypted program/file and thus is sensible that decryption is involved if encryption have been applied to the program/file. Folmsbee discloses a variety of security and protection methods, thus, by stating decryption is not needed (i.e. col.6, lines 19-26) is one of these methods and does not mean there is no decryption or decoding involved at all. In addition, stating decryption is not needed is really applied to the execution of the code and instructions, not the claimed software program. Thus, is not relevant to the claimed invention. The following citations gives various decryption and decoding methods applied to software program and/or information. Whether for software program or file or instructions/codes, Folmsbee suggests the obviousness that decryption exists in the security art or cryptography art prior to applicant's filed invention. Folmsbee also includes decryption of the program and even provides motivation for utilizing decryption for the software program. Folmsbee discloses the CPU is further configured with a distributed plurality of memory stores used for specific decoding information and for increasing the level of security (col.5, lines 29-31). The software company decrypts the encrypted key with its private key and examines it to determine if it has acceptable statistical properties. The encrypted software is sent to the customer (col.19, lines 22-30). Folmsbee also discloses providing different keys for individual CPUs, the ability of an adversary attempting to decrypt the software is limited to the ability to use that particular program on the particular CPU, without an ability to use to the encrypted program on a different CPU (col.22, lines 56-61). Therefore, Folmsbee includes the processor for decoding and decrypting an encrypted program and for executing the program as claimed.

As for argument on pg. 13, with regard to claims 21 and 23-25 that Folmsbee does not teach or suggest decrypting a software file. This has been addressed above.